FILED
AUG 25 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-327

PEOPLE OF THE STATE OF ILLINOIS, Ex rel. JACK HOOGASIAN, State's Attorney of Lake County, and JULIUS ABLER, a resident of the affected area,

Petitioner,

VS.

SEARS, ROEBUCK & COMPANY, a New York Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

JACK HOOGASIAN
State's Attorney of Lake County
Administration Courts Building
18 North County Street
Waukegan, Illinois 60085
(312) 689-6644

JULIUS ABLER
Assistant State's Attorney
Of Counsel

MIDWEST LAW PRINTING CO., CHICAGO 60601, FINANCIAL 6-3988

TABLE OF CONTENTS

	PAGE
OPINION BELOW	1
THE RECORD	2
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS INVOLVED	3
STATEMENT	3
REASONS FOR GRANTING THE WRIT	4
Television Broadcasting Falls Within The Commerce Clause Of The United States Constitution, Article I, Section 8, Clause 3	4
First Amendment Involvement	4
A Cause Of First Impression	4
CONCLUSION	5
APPENDICES:	
A—Complaint	1a
B—Final Order, Supreme Court Of The State Of Illinois	5a
C—Final Order, Supreme Court Of The State Of Illinois	7a
D—Final Order Of The Circuit Court Of The Nineteenth Judicial Circuit, Lake County, Illinois	8a
E—Memorandum Of Opinion Of The Circuit Court Of Lake County	9a

List Of Authorities Cited

United States Constitution, First Amendment	3
United States Constitution, Article I—Section 8, Clause 3	3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No.

PEOPLE OF THE STATE OF ILLINOIS, Ex rel. JACK HOOGASIAN, State's Attorney of Lake County, and JULIUS ABLER, a resident of the affected area,

Petitioner,

vs.

SEARS, ROEBUCK & COMPANY, a New York Corporation,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Illinois Supreme Court entered in the above case on June 30, 1972. No petition for rehearing was filed.

OPINION.

The final order states that opinion of the Supreme Court of the State of Illinois will follow. No opinion has been written as of this date. When such opinion is available it will be forwarded. The opinion of the Circuit Court of the Nineteenth Judicial, Lake County, Illinois, is attached and marked Appendix "E".

THE RECORD.

A certified copy of the record below will be filed in this court. The pertinent parts of the record are contained in the Appendix attached hereto and made a part hereof.

JURISDICTION.

This Petition is presented for review of the judgment of the Illinois Supreme Court entered on June 30, 1972. The jurisdiction of this court is invoked under 28 U.S.C. Section 1257 (3).

QUESTIONS PRESENTED.

Do the People of the State of Illinois (and by extension, the People of the United States), have a public right to television broadcasting and reception?

Does the Defendant, Sears, Roebuck & Company, have the right to erect a structure which will interfere with the transmission of television broadcasting and television reception by thousands of viewers?

Does Sears, Roebuck & Company have rights to the air space above their property subject only to compliance with the building codes and restrictions of the governing municipality?

Did the Supreme Court of the State of Illinois err when it sustained the Circuit Court's ruling striking the Complaint of the People of the State of Illinois and dismissing its cause of action?

CONSTITUTIONAL PROVISIONS INVOLVED.

United States Constitution, First Amendment:

"Congress shall make no law . . . abridging the freedom of speech, or of the press;"

United States Constitution, Article 1, Sec. 8, Clause 3:

"The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States and with the Indian Tribes;"

STATEMENT.

On March 17, 1972, a cause in equity was brought against Sears, Roebuck & Company in which it was alleged in the Complaint that a primary television signal broadcast by stations in Chicago and received by thousands of viewers in Lake County, Illinois, will be affected by a secondary signal or "ghost" of such intensity as to interfere with television broadcasting and reception. This secondary signal or "ghost" will emanate from the Defendant's building presently under construction in Chicago, Illinois. The relief requested is that Defendant be enjoined from constructing its building beyond that height at which it begins to interfere and become a public nuisance. (Appendix A)

A Motion to Strike the Complaint and dismiss the cause for failure to state a cause of action was granted by the Circuit Court of Lake County, Illinois, and on June 30, 1972, was sustained by judgment of an order entered by the Supreme Court of the State of Illinois. An opinion is to follow but has as yet not been handed down.

REASONS FOR GRANTING THE WRIT.

TELEVISION BROADCASTING FALLS WITHIN THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION, ARTICLE 1, SECTION 8, CLAUSE 3.

The public rights adjudicated by the Supreme Court of the State of Illinois to the detriment of the People of that State are of such a nature as to be of universal importance to every person in every segment of the United States. The television broadcasting alleged in the Plaintiffs Complaint to be interfered with by Sears, Roebuck and Company includes programs originating in New York City, Los Angeles, Cape Kennedy, Washington, D.C., Miami, Florida, The Moon, London, Moscow, Peking; places reaching beyond the borders of the State of Illinois and is federal in nature. The right to television reception is one which is public to all of the people of the United States.

FIRST AMENDMENT INVOLVEMENT.

The blackout of television is not a question which asks this Court to adjudicate what may or may not be said or shown via the airwaves but encompasses interference to the point of being unable to at all convey or receive a message. It is the equivalent of a newspaper being so affected as to be able to publish and its public to receive only blank pages. The question resolves itself into whose right prevails? This is the crux that requires this Court's urgent attention and consideration.

A CAUSE OF FIRST IMPRESSION.

This cause presents the first opportunity for this Court to consider and adjudicate the issue of interference with

the transmission of an interstate television signal. This question is distilled to purely one of law based upon a record which contains only a complaint and a motion by the Defendant, Sears, to strike that complaint for failure to state a cause of action and that the cause be dismissed. Law, pure law, seeks this Court's consideration and adjudication in a collision between creatures of a new technology.

CONCLUSION.

Television broadcasting is in the public interest and interference with such broadcasting and its reception by thousands of viewers is a public nuisance that is abatable. The Plaintiff's complaint sets forth a cause of action in equity and its validity is offered to this Court for its consideration.

For the reasons set out in all of the foregoing, Petitioners ask this Court to grant review and to reverse the court below.

Respectfully submitted,

JACK HOOGASIAN
State's Attorney of Lake County
Administration Courts Building
18 North County Street
Waukegan, Illinois 60085
(312) 689-6644

JULIUS ABLER
Assistant State's Attorney
Of Counsel

4. The building is now at about its fiftieth story.

5. VHF Station CBS TV - Channel 2, NBC TV - Channel 5, WBBM TV - Channel 7, WGN TV - Channel 9, WTTW TV - Channel 11 and UHF Stations WXX TV - Channel 20, WFLD TV - Channel 32, WSNS TV - Channel 44 are television broadcasters (hereinafter "the broadcasters") located in the City of Chicago whose television signals emanate from the City of Chicago from broadcasting towers whose heights are less than 1,350 feet.

6. The towers used by the broadcasters are located north and and east of the building.

7. Signals emanate from the towers and radiate three hundred and sixty degrees causing a primary signal to be broadcast and received directly from the towers by receivers of resident viewers of Lake County, Illinois (hereinafter "viewers").

8. Signals will strike the building below its planned height and will be reflected in a northwesterly direction causing a second signal or ghost image (hereinafter "ghost") in that direction.

9. The ghost will appear on the screens of receivers in Lake County at approximately twenty-five per cent displacement of the viewer's right.

10. The ghost will be of such intensity on VHF broadcasts and of even higher intensity on UHF broadcasts as to interfere with the primary signal in that there will be a mixing of colors due to an overlay of different colors. For example, overlays of yellows with blues will appear green and cause the primary signal to be obscured and distinguishable only with great difficulty. Black and white reception will be similarly affected except for color mixing. A primary signal of lettering and numerals, as in election returns, will be overlaid with the ghost letters and numerals making them unreadable.

11. The building will interfere with vertical synchronization of television receivers causing vertical rolling of the picture. The frequency of vertical roll will depend upon and differ according to the receiver and will be continuous on some to incidental on others with gradations between.

12. A rectangularly shaped area of approximately one hundred and sixty-four square miles of Lake County will be affected. This rectangle lies within the approximate lines beginning at the intersection of Illinois Toll Road and County Line Road and running four and one-half miles east on County Line Road (the boundary between Lake and Cook Counties) to Green Bay Road, then northwesterly on a straight line approximately twenty-five and one-half miles to the intersection of State Line Road and Route 41, from there on a straight line west on State Line Road (the boundary between Lake County and Wisconsin) approximately nine and one-half miles to the intersection of State Line Road and Lake Avenue in Antioch Township, then southeasterly approximately twenty-seven and one-half miles to the place of beginning.

13. There is contained within this rectangle approximately 30,880 households and approximately 105,000 viewers.

14. These viewers will be exposed to an intolerable level of annoyance and physical discomfort tending to force them to abandon viewing television receivers.

15. The defendant has been aware of the threatened interference for more than eighteen months having been so advised by the television broadcasters named in paragraph 5.

16. Defendant is engaged in seeking materials with which to surface the building to reduce interference but have not offered solutions which guarantee no interfer-

ence above an acceptable level. The defendant knowing of the threatened interference continues with construction and the building increases in height daily.

17. Plaintiff's requests or demands of the defendant to stop construction until such time as no or acceptable levels of interference can be guaranteed would not be agreed to or complied with by the defendant.

18. Such requests and demands would cause time delays awaiting replies and waste time which is of the essence. The building imminently threatens to interfere with substantial rights of viewers in Lake County.

19. There is no adequate remedy at law and unless restrained and enjoined by this court the defendant threatens to create a permanent public nuisance and cause great inconvenience and damage to the viewers.

20. The building has not reached the critical height of interference with reception.

21. It is estimated that the low point of critical height of interference will be reached within sixty to ninety days.

Wherefore, Plaintiff prays judgment against the defendant as follows:

1. That a Writ of Injunction may issue herein, by the Clerk and under the seal of this Court, enjoining and restraining the defendant from constructing the building beyond a height which is below that height at which the building begins to interfere with the primary signal of television broadcasters.

2. That plaintiff may have such other, further and/or different relief in the premises as equity may require and the Court may deem just.

/s/ Jack Hoogasian
State's Attorney of Lake County

APPENDIX "B"

UNITED STATES OF AMERICA

State of Illinois
Supreme Court—ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of May in the year of our Lord, one thousand nine hundred and seventy-two, within and for the State of Illinois.

Present: Robert C. Underwood, Chief Justice

Justice Walter V. Schaefer — Justice Thomas E. Kluczynski
Justice Daniel P. Ward — Justice Charles H. Davis
Justice Joseph H. Goldenhersh — Justice Howard C. Ryan

William J. Scott, Attorney General
Robert G. Miley, Marshal
Attest: Justin Taft, Clerk

Be It Remembered, that, to-wit: on the 30th day of June 1972, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

PEOPLE EX REL. JACK HOOGASIAN, State's Attorney of Lake County, and JULIUS ABLER, a resident of the affected area,
Appellant,

No. 45199 vs.

SEARS, ROEBUCK & COMPANY, a New York Corporation,
Appellee.

Appeal from Circuit Court Lake County No. 72 CH 86

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and

inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

Therefore, it is considered by the Court that the judgment of the Circuit Court of Lake County aforesaid, Be Affirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error.

I, Justin Taft, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this ..... day of ....., 19.....

..... Clerk,

Supreme Court of the
State of Illinois.

APPENDIX "C"

No. 45199—People ex rel., Jack Hoogasian, et al., Appellants, vs. Sears, Roebuck & Company, Appellee

After consideration of the briefs of the parties and hearing oral argument in these consolidated cases, it is ordered that the judgments of the Circuit Court of Lake County in case No. 45199 and of the Circuit Court of Cook County in case No. 45216 are affirmed. An opinion will follow.

/s/ Robert C. Underwood, C.J.

/s/ Walter V. Schaefer, J.

/s/ Thomas E. Kluczynski, J.

/s/ Daniel P. Ward, J.

/s/ Charles H. Davis, J.

/s/ Howard C. Ryan, J.

Mr. Justice Goldenhersh took no part.

APPENDIX "D"

State of Illinois
County of Lake—ss.

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS EX REL. JACK HOOGASIAN, State's Attorney of Lake County, and JULIUS ABLER, a resident of the affected area, *Plaintiff,* vs. SEARS, ROEBUCK & COMPANY, a New York corporation, *Defendant.*	In Chancery No. 72 CH 86 [Filed 5-17-72]

ORDER

This cause coming on to be heard upon the Complaint of the Plaintiff and the Motion of the Defendant to strike the Complaint and to dismiss the suit and the Court having heard the arguments of counsel and having considered written Briefs heretofore filed and having heard further argument of counsel and being fully advised in the premises finds that the motions of the Defendant should be granted.

It Is Therefore, Ordered, Adjudged and Decreed as follows:

1. That the Complaint of the Plaintiff be and the same is hereby stricken.

2. That the above entitled cause of action be and the same is hereby dismissed for want of equity.

Dated: May 17th, 1972.

Enter: /s/ LaVerne Dixon
Judge

APPENDIX "E"

State of Illinois
County of Lake—ss.

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT, LAKE COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS EX REL. JACK HOOGASIAN, State's Attorney of Lake County, and JULIUS ABLER, a resident of the affected area, *Plaintiff,* vs. SEARS, ROEBUCK & COMPANY, a New York corporation, *Defendant.*	In Chancery No. 72 CH 86 [Filed 5-17-72]

MEMORANDUM OF OPINION

This matter coming on to be heard on the People's complaint for an injunction to stop further construction of the defendant's building and on the defendant's motion to strike and dismiss the plaintiff's complaint, and the Court having heard arguments of the respective parties and having reviewed briefs submitted by said parties, and the Court having jurisdiction of this matter, the opinion of the Court is as follows:

Regrettably, because my viewing of T.V. may also be affected, the Court finds that the receivers of T.V. signals do not have an inherent right to uninterrupted or clear T.V. reception. If the opposite were true, then one could stop a neighbor from constructing a home or building next door that would interfere with one's T.V. antenna receiving T.V. signals. This we know cannot be done.

The Court further finds that Sears has a right to the air space above their property subject only to the compliance with the building codes and restrictions of the governing municipality. See *Federal Electric Co.* v. *Zoning Board,* S.C. Ill., 1947, 398 Ill. 142; *U. S.* v. *Causby,* 1945, 328 U.S. 256; and *Richmond Brothers, Inc.* v. *H. Frederick Hagemann, Jr.,* Sup. Jud. Ct., Mass., 1971, 268 N.E. 2d 682.

It is undisputed that Sears applied for and received the necessary building permits from the City of Chicago.

It appears to the Court that if any right exists to have uninterrupted T.V. signals, that right exists only in the T.V. statious producing those signals. It is not known whether the T.V. statious alleged to be affected by Sears' construction made any formal objection to the issuance of the building permits by the City of Chicago or not. In any event, if such a right does exist in these T.V. statious, then they are the ones who should institute suit for an injunction and since they are governed by the F.C.C. (a Federal governmental agency) such proceedings should be instituted in Federal Court and not in a State Court.

Therefore, for the reasons stated above and other arguments and citations stated in defendant's memorandum, the Court is granting defendant's motion to strike and dismiss plaintiff's complaint and counsel for defendant is instructed to prepare the appropriate order.

Dated this 17th day of May, 1972.

/s/ LaVerne Dixon
Judge